STATE OF MICHIGAN

IN THE SUPREME COURT

AUDREY TROWELL,

Plaintiff-Appellee,

-vs-

PROVIDENCE HOSPITAL AND MEDICAL CENTERS, INC.,

Defendant-Appellant.
_____/

Supreme Court No. 154476

Court of Appeals No. 327525

Oakland County Circuit Court No. 2014-141798-NO

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF SUBMITTED PURSUANT TO THE COURT'S APRIL 5, 2017 ORDER

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TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES

Cases **Page**

Statutes

Rules

STATEMENT OF FACTS

This case comes before this Court in a highly unusual posture. The entire circuit court record of relevance to the legal issues presented in this case consists of a single pleading - the complaint filed by Ms. Trowell on Plaintiff's February 11, 2014 Complaint. There are no depositions, no documents, no interrogatory responses, nor any other discovery material of any relevance to the issue presented. Moreover, as the Court of Appeals noted in its August 16, 2016 opinion, Plaintiff's Complaint, the single document that comprises the circuit court "record," is "fairly vague" and:

> lacks elaboration in terms of describing and factually supporting the particular theories of negligence it sets forth, ostensibly because plaintiff was short on information concerning details of the incident and intended to rely on discovery to elicit specifics.
>
> *Trowell v Providence Hospital & Medical Centers, Inc.*, 316 Mich App 680, 695; 893 NW2d 112 (2016)

As will be discussed in this brief, the legal issue that this appeal presents - the distinction between ordinary negligence and medical malpractice in a case arising out of a patient's fall in the hospital setting - is one that this Court has already determined to be dependent on "the particular factual setting of the plaintiff's claim." *Bryant v Oakpointe Villa Nursing Centre*, 471 Mich 411, 421, fn. 9; 684 NW2d 864 (2004). In this case, the Complaint itself is "fairly vague" and there has been absolutely no development of the "particular factual setting" through the discovery process. Under these circumstances this Court should decline to take up the issue that defendant has raised in its application for leave.

Audrey Trowell filed a Complaint in the Wayne County Circuit Court on February 11, 2014. Ms. Trowell alleged that she was admitted to Providence Hospital and Medical Center ("Providence") in Southfield, Michigan on February 11, 2011. Complaint (Defendant's Application

Exhibit B), ¶5. The reason for her hospitalization was an aneurysm that caused her to suffer a stroke. *Id*. Ms. Trowell was placed in Providence's intensive care unit (ICU). *Id*., ¶6.

In her Complaint Ms. Trowell alleges that Providence "had a duty to ensure that Plaintiff received proper assistance while a patient, including assistance ambulating to and from the bathroom while she was in the ICU." *Id*., ¶8. The Complaint further asserts that Ms. Trowell "had been advised" that two staff members were needed to assist her to and from the bathroom. *Id*., ¶9.

The complaint alleges, however, that on a number of occasions only one person assisted Ms. Trowell to the bathroom. On one such occasion, an agent of Providence whom the complaint characterized as a nurse, Dana McCorkle,[1] attempted to assist Ms. Trowell to the bathroom by herself. *Id*., ¶10. The Complaint alleges that while attempting to assist Ms. Trowell, Ms. McCorkle dropped her, causing Ms. Trowell to hit her head on her wheelchair. *Id*., at 11.

After dropping Ms. Trowell once, Ms. McCorkle then picked Ms. Trowell up and managed to drop her a second time. *Id*., at 12. Ms. Trowell suffered a torn rotator cuff as a result of her falls and she developed bleeding in the brain. *Id*., ¶¶13-14.

In her February 2014 Wayne County Complaint, Ms. Trowell alleged that Providence and its agent negligently caused her injuries in the following respects:

> 15. Defendant hospital was negligent in one or more of the following particulars, departing from the standard of care in the community.
>
> a. Failure to ensure the safety of Plaintiff while in Defendant's hospital;
>
> b. Failure to properly supervise the care of Plaintiff while in

[1]The Complaint only identified this employee as "Dana". It was only after the Complaint was filed that Plaintiff learned that Dana's last name was McCorkle. In addition, while the Complaint identified "Dana" as a nurse, it was later revealed that Ms. McCorkle was a nurse's aide. *Trowell*, 316 Mich App at 683, fn. 1.

Defendant's hospital;

c. Failure to provide an adequate number of nurses to assist Plaintiff while in Defendant's hospital;

d. Failure to properly train "Dana" and other nurses in how to properly handle patients such as Plaintiff;

e. Failure to exercise proper care to prevent Plaintiff from being injured while in Defendant's hospital.

Id., ¶15(a)-(e).

On March 5, 2014, Providence filed a motion to transfer venue to the Oakland County Circuit Court. A stipulated order was signed on March 26, 2014 transferring venue to Oakland County. Stipulated Order (Defendant's Application Exhibit D). According to the Oakland County Circuit Court docket sheet, the transfer of venue was not effectuated in that Court until July 14, 2014. Between the time that the case was filed in February 2014 until the transfer of venue occurrence five months later, no discovery was conducted by the parties.

The Oakland County Circuit Court issued an initial scheduling order that called for discovery in the case to be completed by January 23, 2015. That scheduling order was later amended and the discovery cut-off date was extended to April 22, 2015. Exhibit 1 to this brief is a copy of the scheduling order that extended discovery to that date.

In October 2014, Ms. Trowell served both a set of interrogatories and a request for production of documents on Providence. Providence failed to respond to either of these discovery requests within the time periods provided in MCR 2.309(B) and MCR 2.310(C).

As of January 2014, Providence had still not responded to Ms. Trowell's October 2014 discovery requests, nor had the parties taken the deposition of either Ms. Trowell or Ms. McCorkle.

With the discovery in the case in this unfinished state, Providence filed a motion for summary disposition on January 9, 2015. Motion (Defendant's Application Exhibit E). In that motion, which was brought under MCR 2.116(C)(7) and (8), Providence asserted that Ms. Trowell "filed her Complaint as a general negligence action, however, the allegations therein actually sound in medical malpractice." Motion for Summary Disposition (Defendant's Application Exhibit E), ¶2. Providence's summary disposition motion was filed without any documentary support; no exhibits were attached to that motion.

In its summary disposition motion and in the brief that was filed in support of that motion, Providence asserted that the claims of negligence being asserted by Ms. Trowell were to be found solely in paragraph 15 of her Complaint. According to Providence's motion, that paragraph read "in pertinent part":

> 15. Defendant hospital was negligent in one or more of the following particulars, **departing from the standard of care in the community . . .**
>
> b. **Failure to properly supervise** the care of Plaintiff while in Defendant's hospital;
>
> c. **Failure to provide an adequate number of nurses** to assist Plaintiff while in Defendant's hospital;
>
> d. **Failure to properly train "Dana" and other nurses** in how to properly handle patients such as Plaintiff;
>
> e. **Failure to exercise proper care** to prevent Plaintiff from being injured while in Defendant's hospital.
>
> Motion (Defendant's Application Exhibit E), at 2 (emphasis in original)

Thus, Providence represented in its motion and supporting brief that the portions of Ms. Trowell's complaint that were "pertinent" to its motion were ¶15(b)-(e). Notably missing from

Defendant's motion was any mention of the allegations of negligence contained in ¶15(a) of the complaint, in which Ms. Trowell had alleged that Providence was negligent for its "[f]ailure to ensure the safety of Plaintiff while in the Defendant's hospital".

On February 12, 2015, even before filing a response to Providence's motion for summary disposition, Ms. Trowell filed a motion seeking to compel responses to the interrogatories and requests to admit that had been served on Providence over three months earlier. A copy of that motion is Exhibit 2 to this brief.

Ms. Trowell's response to Providence's summary disposition motion was filed on February 25, 2015. A copy of that response is Exhibit 3 to this brief. In her response, Ms. Trowell made reference to several Michigan appellate decisions that had determined that causes of action based on a hospital patient's fall represented claims of ordinary negligence, not medical malpractice. *See e.g. Gold v Sinai Hospital of Detroit*, 5 Mich App 368; 146 NW 723 (1966); *Fogel v Sinai Hospital of Detroit*, 2 Mich App 99; 138 NW 503 (1965). Ms. Trowell, in responding to Providence's motion, also made note of the discovery that remained to be conducted in the case and she asserted that the court's consideration of the motion was premature on that basis alone:

> Moreover, summary disposition under (C)(10) is premature before discovery on a disputed issue is complete. *Village of Dimondale v Grable*, 240 Mich App 553, 566 (2000). Not only is discovery not yet complete but Defendant has not yet responded to any of Plaintiff's discovery requests; thus, Defendant's motion is premature as Plaintiff cannot fairly respond to Defendant's motion without any information from Defendant regarding the incident in question. In addition, Defendant's counsel has indicated that the nurse who dropped Plaintiff no longer works for Defendant, and Plaintiff will have to expend time and resources attempting to locate her to provide testimony regarding this claim. For these reasons, summary disposition is not appropriate at this time.
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> Response (Exhibit 3), at 8.

While Providence's summary disposition motion was pending, counsel for Ms. Trowell took some steps to secure the deposition of Dana McCorkle. Since Ms. McCorkle was no longer employed by Providence, Plaintiff's counsel attempted to schedule her deposition by serving her with a subpoena. On March 30, 2015, counsel for Providence wrote a letter to Ms. Trowell's attorney indicating that Mr. McCorkle had not been served with the subpoena and that her deposition would not be taking place. A copy of this March 30, 2015 letter is Exhibit 4 to this brief.

A hearing on Providence's motion for summary disposition took place on April 8, 2015. At the conclusion of that hearing, the circuit court ruled on the record that Providence's motion would be granted for the following reasons:

> The Court finds that plaintiff's allegations sound in medical malpractice. The failure to train sounds in medical malpractice. Furthermore, allegations concerning staffing decisions and patient monitoring involve questions of professional medical management and not issues of ordinary negligence that can be judged by the common knowledge of experience of a jury. See *Doris* at page 47. Therefore, defendant's motion for summary disposition is granted.
>
> Tr. 4/8/15, at 11-12.

Thus, the circuit court concluded that because Ms. Trowell's claims based on negligent training, negligent staffing and negligent monitoring all stated claims of medical malpractice, not ordinary negligence, Providence was entitled to summary disposition since Ms. Trowell had not complied with the procedural requirements for instituting a medical malpractice action. *See* MCL 600.2912b; MCL 600.2912d.

Ms. Trowell filed a timely motion for reconsideration of the circuit court's order granting summary disposition. Motion for Reconsideration (Defendant's Application Exhibit F). Ms. Trowell further requested that she be allowed to amend her Complaint. *Id*. The circuit court denied

the motion for reconsideration in an order dated May 4, 2015. Order (Defendant's Application Exhibit G). The circuit court denied Ms. Trowell's request to amend her complaint in a May 26, 2015 order. Order (Defendant's Application Exhibit J).

Ms. Trowell appealed to the Michigan Court of Appeals. A panel of that Court issued a published decision on August 16, 2016, reversing the circuit court's grant of summary disposition.

After noting the vagueness of the complaint and the inadequacies of the circuit court record, the panel observed in its August 16, 2016 opinion:

> As best we can glean from plaintiff's complaint, the claims of direct and vicarious liability are ultimately predicated on a negligence theory pertaining to (1) the use of one nurse's aide to assist plaintiff and not two aides or nurses and (2) the manner in which the nurse's aide physically handled plaintiff when providing assistance, regardless of the number of hospital personnel involved. Stated otherwise, plaintiff is alleging that the nurse's aide was negligent for attempting to assist plaintiff without help or for improperly handling plaintiff or both and that the hospital was negligent for training, supervision, staffing, monitoring, and oversight decisions tied to the number of aides or nurses needed, available, and employed to assist plaintiff or in regard to proper patient-handling techniques when moving a patient or both.
>
> 316 Mich App at 696-697.

The panel then focused on the two claims of vicarious liability against Providence that it identified: (1) negligence in the use of one, as opposed to two, aides to assist Ms. Trowell; and (2) the manner in which Ms. McCorkle handled Ms. Trowell. *Id*., at 697-700. As to both of these potential claims, the panel concluded that, depending on the circumstances, such claims might rest in either medical malpractice or ordinary negligence. *Id*.

The panel concluded that, based on the inadequacy state of the factual record, it could not conclude that the circuit court acted correctly in ruling as a matter of law that these claims rested exclusively in medical malpractice as opposed to ordinary negligence. The Court of Appeals ruled

in its August 16, 2016 opinion:

> Absent documentary evidence and illumination from the complaint, we simply cannot ascertain whether the instant case is such a case or whether medical expertise and judgment must be contemplated relative to the question of the number of aides or nurses that should have been employed to safely assist plaintiff. The allegations in the complaint alone were inadequate to serve as a basis to summarily dismiss plaintiff's action, and plaintiff was not obligated to submit documentary evidence when the hospital chose not to do so in support of its motion for summary disposition.
>
> * * *
>
> Again, we recognize that in certain cases it may be necessary to examine matters that implicate medical judgment in conjunction with matters that do not implicate medical judgment relative to evaluating whether negligence occurred in handling a patient. But we cannot determine solely from the allegations in plaintiff's complaint whether this case falls into that category, thereby implicating medical judgment, or whether medical judgment is simply not relevant in assessing whether the nurse's aide acted reasonably.

Id. at 699-700.

Providence filed an application for leave to appeal in this Court on September 23, 2016. On April 5, 2017, the Court issued an order directing the Clerk to schedule oral argument on Providence's application. *Trowell v Providence Hospital and Medical Centers*, ___ Mich ___; 892 NW2d 370 (2017). The Court's order further instructed the parties to file supplemental briefs, "addressing whether the claims in the plaintiff's complaint sound in ordinary negligence or medical malpractice."

ARGUMENT

THE COURT SHOULD DENY THE DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL.

Thirteen years ago, this Court issued its ruling in *Bryant*, the case that remains the seminal decision on the subject of the distinction between a claim sounding in ordinary negligence and an action predicated on medical malpractice. For the reasons set out by this Court in *Bryant*, this is a particularly inappropriate case to build on the *Bryant* holding. This Court should, therefore, deny Providence's application for leave to appeal.

This case arises out of injuries that Ms. Trowell sustained when she was twice dropped by a nurse's aide who was supposed to be assisting her to and from the bathroom. The Court of Appeals ruled in its August 16, 2016 opinion that, depending on the surrounding facts, such a fall-related claim occurring within a hospital may constitute a claim of malpractice or it could amount to ordinary negligence. 316 Mich App at 698-699. The Court of Appeals further determined that the vagueness of the Complaint along with the case's lack of factual development through the discovery process made it impossible to determine whether this particular fall-related case sounded in medical malpractice or ordinary negligence. In concluding as it did, the Court of Appeals reached a result that was completely consistent with this Court's ruling in *Bryant*.

In *Bryant*, this Court had to consider an area of confusion in Michigan law generated by the Court's prior order in *Regalski v Cardiology Associates, P.C.*, 459 Mich 891; 587 NW2d 502 (1998). *Regalski* is of particular importance here in that it involved a patient's suit to recover for injuries she received in a fall while being assisted by a member of the defendant's staff. This Court issued an order in *Regalski* in which it concluded that the technician who was assisting the plaintiff at the time

she fell, was engaging in medical care and treatment and, on that basis, found that the claim sounded in medical malpractice.

The defendant in *Bryant* argued before this Court that the *Regalski* order called for an expansive view of what constituted medical malpractice. The defendant in *Bryant* suggested that, based on *Regalski*, a medical malpractice action existed every time a plaintiff sued "an employee or agent of a licensed health facility." MCL 600.5838a.

This Court in *Bryant* rejected the defendant's broad reading of *Regalski*. In doing so, the Court stressed that *Regalski* had been decided on its specific facts: "we interpret this Court's *Regalski* holding to mean that the facts in that case led to the conclusion that the particular assistance rendered to that patient involved a professional relationship and implicated medical judgment." *Bryant*, 471 Mich at 421, fn. 9.

The *Bryant* Court then went on to explain that a case such as *Regalski* in which a patient is injured as a result of a fall in a hospital may or may not be a medical malpractice claim depending on the underlying facts:

> Even in the wake of *Regalski*, then, injuries incurred while a patient is being transferred from a wheelchair to an examining table (to take one example) may or may not implicate professional judgment. *The court must examine the particular factual setting of the plaintiff's claim in order to determine whether the circumstances for example, the medical condition of the plaintiff or the sophistication required to safely effect the move-implicate medical judgment as explained in Dorris [v. Detroit Osteopathic Hospital Corp*, 460 Mich 26; 594 NW2d 455 (1999)].

Id. (Emphasis added).

In this case in which Ms. Trowell was injured in a hospital fall, the Court of Appeals arrived at a result that is in complete harmony with these observations made by this Court in *Bryant*. Just as this Court did in footnote 9 of its decision in *Bryant*, the Court of Appeals in this case recognized

that a claim being asserted by a patient who was injured in a hospital fall may, depending on the particular circumstances of the case, have a cause of action that sounds in medical malpractice or ordinary negligence. Thus, as prescribed by this Court in *Bryant*, the Court of Appeals recognized that it was compelled to "examine the particular factual setting of the plaintiff's claim." 316 Mich App at 693.

Bryant instructs that the key to analyzing whether a fall-related case sounds in medical malpractice or ordinary negligence is a careful evaluation of the circumstances of the occurrence and the actions involved. The circuit court in this case had no facts upon which to make this determination. Moreover, the employee whose negligence is the subject of this claim, Ms. McCorkle, is not a licensed healthcare provider, and what she was thinking or what led to this occurrence has not yet been developed.

While *Bryant* charges courts with the obligation to examine "the particular factual setting" to determine if a claim sounds in medical malpractice or ordinary negligence, there was a complete absence of such facts in this case. In bringing its motion for summary disposition, Providence offered only legal argument; it supplied no facts or documentary evidence. Ms. Trowell responded to the motion without extrinsic evidence of her own since none of the discovery that Plaintiff requested had been provided by Defendant.

Instead, Defendant filed what appeared to be a motion for summary disposition premised on MCR 2.116(C)(8) based on the allegations contained in a single paragraph of Ms. Trowell's complaint. Providence argued in its summary disposition motion that the "pertinent" parts of paragraph 15 of Ms. Trowell's complaint represented claims of medical malpractice, not ordinary

negligence. Motion (Defendant's Application Exhibit E), ¶3.[2]

As the Court of Appeals properly noted in its August 16, 2016 opinion, Providence's decision to focus exclusively on Paragraph 15(b)-(e) of Ms. Trowell's Complaint overlooked the fact that "[t]he gravamen of a lawsuit is determined by reading the complaint as a whole . . ." 316 Mich App at 695; *see also Tipton v Wm Beaumont Hospital*, 266 Mich App 27, 33; 697 NW2d 552 (2005). Moreover, whether Providence's motion was brought under MCR 2.116(C)(7) or (8), it is clear that the contents of Ms. Trowell's Complaint had to be construed in the light most favorable to her. *See Tryc v Michigan Veteran's Facility*, 451 Mich 129, 139; 545 NW2d 642 (1996); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Taking the contents of Ms. Trowell's Complaint as a whole and construing its contents in the light most favorable to her, it is obvious that the claims of negligence being asserted in this case went beyond the particular allegations in ¶15(b)-(e) of that Complaint, the portions of the complaint that Providence chose to challenge in its motion for summary disposition.

The complaint that Ms. Trowell filed clearly sought recovery for the injuries that she sustained in two falls that occurred in Defendant's hospital. Complaint (Defendant's Application

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[2]In moving for summary disposition, Providence did not even address the entirety of ¶15 of the Complaint; it addressed the portions of that paragraph that it deemed "pertinent" to its motion. These "pertinent" parts of Plaintiff's claims of negligence consisted only of ¶15(b)-(e); Providence apparently did not find the allegations contained in ¶15(a) of Ms. Trowell's complaint to be "pertinent" to its motion. Thus, as drafted, the motion that Providence filed should probably have been more accurately characterized as a motion for *partial* summary disposition since Providence filed a motion under MCR 2.116(C)(8) and its motion was directed only at the particular allegations that Providence deemed to be "pertinent" to its motion, ¶15(b)-(e). Since Providence's motion did not even challenge the propriety of the allegations of negligence contained in ¶15(a), it is difficult to see how the circuit court could have dismissed the entirety of Ms. Trowell's cause of action on the basis of the motion that Defendant elected to file.

Exhibit B), ¶18. The Complaint further alleged that "[t]he negligence of Detroit and its agents, employees and staff was the proximate cause of Plaintiff's damages . . ." *Id.*, ¶17. Finally, the Complaint explicitly asserted that Providence's agents "had a duty to ensure that Plaintiff received proper assistance while a patient, including assistance ambulating to and from the bathroom while she was in the ICU." *Id.*, ¶8.

The Court of Appeals was, therefore, entirely correct in concluding that the complaint, fairly read, stated a claim of vicarious liability against Providence based on Ms. McCorkle's negligence in her handling of Ms. Trowell that led to her two falls. 316 Mich App at 696-697.[3]

The Court of Appeals, consistent with *Bryant*, was also correct in recognizing that Ms. McCorkle's negligence that allegedly caused Ms. Trowell to fall *may* sound in medical malpractice or ordinary negligence depending on the "particular factual setting of the plaintiff's claim." *Bryant*, 471 Mich 421, fn. 9. But, once again, it was impossible for the Court of Appeals to arrive at a reasoned decision labeling Ms. Trowell's negligence claim as either medical malpractice or ordinary negligence where there had been no development of the underlying facts.

This Court's reasoning in *Bryant* highlights the inadequacy of the factual record in this case. In *Bryant,* the Court expressed the view that a case arising out of a fall in a health care facility might or might not represent a claim of medical malpractice. Among the factors that the *Bryant* Court identified as possibly relevant in making this determination was "the medical condition of the

[3]It is further worth noting that these claims were not the claims that the circuit court elected to address in granting Providence's motion for summary disposition. In granting Providence's motion, the circuit court found only that "[t]he failure to train sounds in medical malpractice . . . [and] allegations concerning staffing decisions and patient monitoring involve questions of professional judgment." Tr. 4/8/15, at 12. The circuit court did not explicitly address in its summary disposition ruling any claim of negligence associated with Ms. McCorkle's acts or omissions that caused Ms. Trowell to fall twice.

plaintiff or the sophistication required to safely effect the move." 471 Mich at 4321, fn. 9.

In this case, the record contains no information whatsoever of Ms. Trowell's medical condition on the date that she suffered her injuries. Not only has Ms. Trowell not been deposed, but the record reveals nothing with respect to the Providence agent whose alleged negligence is at the center of this case, Ms. McCorkle. Most importantly, there is nothing in the circuit court record explaining how it was that Ms. Trowell came to fall twice while being assisted by Ms. McCorkle.[4]

The circuit court in this case determined as a matter of law that the allegations in the complaint stated only claims of medical malpractice. In reversing that ruling, the Court of Appeals announced a narrow ruling.[5] It held, consistent with *Bryant*, that Ms. Trowell's claims based on the alleged negligence of Ms. McCorkle in attempting to assist her to the bathroom, *might* or *might not* represent claims of medical malpractice. The Court of Appeals, again consistent with *Bryant*, further ruled that the barren factual record in this case was inadequate to resolve those facts pertinent to

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[4]It is also of some significance in terms of the inadequate circuit court record that the circuit court issued its ruling granting summary disposition at a time when the discovery period had not yet expired. *See* Amended Scheduling Order (Exhibit 1).

[5]Providence rather unconvincingly attempts to inflate the scope of the Court of Appeals ruling in this case. In its application for leave, Providence argues that the Court of Appeals erroneously ruled that Ms. Trowell's direct claims of negligence based on Providence's failure to train or failure to properly supervise its staff stated claims of ordinary negligence. Defendant's Application, at 8-10. In light of the fact that, with the exception of a claim based on Ms. McCorkle dropping Ms. Trowell a second time, 316 Mich App at 701-02, the Court of Appeals did not affirmatively decide that *any* of Ms. Trowell's claims sounded in ordinary negligence, it is somewhat ridiculous for the Defendant to suggest that the Court of Appeals actually decided that any claims of failure to supervise or failure to train actually stated a claim in ordinary negligence. Moreover, since the Court of Appeals affirmatively held that only Ms. Trowell's claims based on the alleged negligence of Ms. McCorkle *might* be construed as ordinary negligence, the obvious implication of the Court of Appeals decision in this case is that direct claims of negligence based on failure to supervise or failure to train do *not* sound in ordinary negligence.

distinguishing a medical malpractice action from one for ordinary negligence.

The Court of Appeals decision that Providence would have this Court review is almost no decision at all. All that the Court of Appeals did in this case was to declare, in line with *the* controlling precedent from this Court, that further factual development is necessary before it can be determined whether Ms. Trowell's entire cause of action is to be dismissed as sounding in medical malpractice. This is not a particularly surprising or particularly controversial result in a case in which virtually no discovery has been conducted.

For these reasons, this is not a case that should occupy the time of this Court.

RELIEF REQUESTED

Based on the foregoing, plaintiff-appellee, Audrey Trowell, respectfully requests that this Court deny defendant's application for leave to appeal in its entirety.

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